



**DEPARTMENT OF MENTAL HEALTH  
POLICY/PROCEDURE**

<b>SUBJECT</b> <b>USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION OF DECEASED CLIENTS, MINORS AND TO PERSONAL REPRESENTATIVES</b>	<b>POLICY NO.</b>  <b>500.08</b>	<b>EFFECTIVE DATE</b>  <b>04/14/2003</b>	<b>PAGE</b>  <b>1 of 8</b>
<b>APPROVED BY:</b>  Director	<b>SUPERSEDES</b> <b>500.26</b> <b>04/14/2003</b>	<b>ORIGINAL ISSUE DATE</b>	<b>DISTRIBUTION LEVEL(S)</b>  <b>1</b>

**PURPOSE**

- 1.1 To outline the policy and procedures of the Department of Mental Health (DMH) with regard to the use or disclosure of Protected Health Information (PHI) of deceased clients, minors and to personal representatives of clients, in accordance with the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996, 45 CFR, Parts 160 and 164 (HIPAA).

**POLICY**

2.1 Deceased Clients

DMH will ensure its use or disclosure of the PHI of deceased clients is in accordance with applicable law. If under applicable California law, an executor, administrator or other person has the authority to act on behalf of a deceased client or deceased client's estate, then DMH shall treat such person as the deceased client's personal representative and allow such personal representative to make decisions regarding the deceased client's PHI. Before using or disclosing the PHI of a deceased client, DMH will obtain, if necessary, an appropriate Authorization from the personal representative of the deceased client in accordance with the policy on Use and Disclosure of PHI for treatment, payment or health care operations or pursuant to Authorization. This policy applies as long as DMH maintains a deceased client's PHI.

2.2 Adults or Emancipated Minors

Of under applicable law, a person has the authority to act on behalf of a client who is an adult or an emancipated minor regarding health care decisions, then DMH must treat this person as the client's personal representative responsible



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for making decisions regarding the use and disclosure of such client’s PHI and must obtain, as necessary, an appropriate Authorization from the personal representative in accordance with the policy on Use and Disclosure of PHI for treatment, payment or health care operations or pursuant to Authorization.

### 2.3 Unemancipated Minors

If under applicable law, a parent, guardian or person acting *in loco parentis* has the authority to act on behalf of a client who is an unemancipated minor regarding health care decisions, then DMH must treat such person as a personal representative responsible for making decisions regarding the use and disclosure of such client’s PHI and must obtain, as necessary, an appropriate Authorization from the personal representative in accordance with the policy on Use and Disclosure of PHI for treatment, payment or health care operations or pursuant to Authorization.

## DEFINITIONS

- 3.1 **“Authorization”** means the signed Authorization language used by DMH to obtain a client’s permission prior to using or disclosing that client’s PHI for purposes that do not fall within the definitions of treatment, payment or health care operations activities.
- 3.2 **“Disclosure”** means, with respect to PHI, the release of, transfer of, provision of access to, or divulging in any manner of PHI outside of the Department’s internal operations or to other than its workforce members.
- 3.3 **“Minor”** means, under California Law:
  - 3.3.1 A person under the age of 18;
  - 3.3.2 An emancipated minor is considered to be an adult for the purpose of consenting to medical care. An emancipated minor is one who comes within any of the following categories:



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3.3.2.1 Emancipated by court order. Minors 14 years of age or older may petition a state court for emancipation.

3.3.2.2 Minors on active duty with the United States armed forces regardless of age.

3.3.2.3 Married or formerly married.

3.3.3 A self-sufficient minor is one who is 15 years of age or older living separate and apart from his/her parents or legal guardian and manages his/her own financial affairs regardless of the source of income.

3.3.3.1 A self-sufficient minor may consent to his/her medical care without parental consent.

3.4 **“Personal Representative”** means

3.4.1 The guardian or conservator of an adult client.

3.4.2 A parent or guardian of a Minor who is a client.

3.4.3 The executor or administrator of the estate of a person who has died.

3.5 **“Protected Health Information”** (PHI) means information that (i) is created or received by a health care provider, health plan, employer or health care clearing house; (ii) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; and (iii) identified the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual.

3.6 **“Use”** means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within the Department’s internal operations.

**PROCEDURE**



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4.1 Deceased Clients

- 4.1.1 If under applicable law an executor, administrator or other person has the authority to act on behalf of a deceased client or the deceased client's estate, DMH will treat such person as the personal representative of the deceased client and will allow such personal representative to make decisions regarding the decedent's PHI.
- 4.1.1.1 DMH must verify the identity and authority of a person declaring himself/herself to be the executor, administrator or other person with authority to act on behalf of the deceased client in accordance with the policy on Verification of Identity and Authority of Person Requesting PHI.
- 4.1.1.2 After the person has been properly identified as the personal representative, DMH must obtain an Authorization, as applicable, from the personal representative regarding the use and disclosure of the decedent's PHI.
- 4.1.2 There are six (6) general exceptions that permit DMH to disclose the PHI of a deceased client for purposes outside the scope of treatment, payment and health care operations and without an Authorization from the personal representative. These include:
- 4.1.2.1 Disclosure of PHI needed by coroners;
- 4.1.2.2 Disclosure of PHI needed by medical examiners;
- 4.1.2.3 Disclosure of PHI needed by funeral directors;
- 4.1.2.4 Disclosure of PHI needed to facilitate an organ donation;
- 4.1.2.5 Disclosure of PHI to alert a law enforcement agency of the death of the client if DMH has a suspicion that such death may have resulted from criminal conduct.



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4.1.2.6 For disclosure to researchers in preparation for a research study. See the policy on Use and Disclosure for Research.

4.1.3 If any of the exceptions in Section 4.1.2 apply, DMH must document the disclosure using the Disclosure of Deceased Individuals' PHI without Authorization Form" (Attachment I) and the applicable exception under which it was made.

4.2 Personal Representatives of Adults or Emancipated Minors

4.2.1 Any person who has the authority under applicable law to act on behalf of a client who is an adult or an emancipated minor regarding health care decisions will be treated by DMH as the personal representative responsible for making decisions regarding the use and disclosure of the client's PHI.

4.2.1.1 DMH will verify the identity and authority of a person declaring himself/herself to be the personal representative of the client in accordance with the Policy on Verification of Identity and Authority of Individual Requesting PHI.

4.2.1.2 After the person has been properly identified as the personal representative, DMH will obtain an Authorization, as necessary from the personal representative regarding the use and disclosure of the client's PHI in accordance with the policy on Uses and Disclosure of PHI for treatment, payment or health care operations.

4.3 Personal Representatives for Unemancipated Minors

4.3.1 Any parent, guardian or person *in loco parentis* (a "Parent") who has the authority under applicable law to act on behalf of a client who is an unemancipated minor in making decisions related to health care will be deemed by DMH to be the personal representative responsible for making decisions regarding the use and disclosure of such client's PHI.



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4.3.1.1 DMH will verify the identity and authority of a person declaring himself/herself to be a Parent in accordance with the policy on Verification of Identity.

4.3.1.2 After the Parent has been properly identified as the personal representative of an unemancipated minor, DMH will obtain an Authorization, as necessary, from the personal representative regarding the use and disclosure of the unemancipated minor's PHI in accordance with the policy on Use and Disclosure of PHI for treatment, payment or health care operations.

4.3.2 Exceptions to Personal Representative Procedure for Unemancipated Minors

An unemancipated minor has the authority to act as an individual with regard to PHI and a Parent cannot act as the unemancipated minor's personal representative if:

4.3.2.1 The unemancipated minor consents to health care service(s) and no by law and the minor has not requested that any other person be treated as the personal representative;

4.3.2.2 The unemancipated minor may lawfully obtain the health care service(s) without the consent of a Parent and the minor, a court, or another person authorized by law consents to such health care service(s); or

4.3.2.3 A Parent assents to an agreement of confidentiality between DMH and the unemancipated minor with respect to health care service(s).

4.3.2.4 If any of the exceptions set forth in Section 4.3.2 apply, then DMH is responsible for ensuring that it obtains an Authorization, as necessary, from the unemancipated minor



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regarding the use and disclosure of the unemancipated minor's PHI in accordance with the policy on Use and Disclosure of PHI for treatment, payment or health care operations.

4.4 Situations Warranting Disregard of Personal Representative

4.4.1 DMH may elect not to treat a person as a client's personal representative under this policy, if DMH has a reasonable belief that:

4.4.1.1 The client has been or may be subjected to domestic violence, abuse or neglect by the person declaring himself/herself to be the personal representative; or

4.4.1.2 Treating the person as the personal representative could endanger the client; and

4.4.1.3 In its professional judgment, the Department decides that it is not in the best interest of the client to treat the person as the client's personal representative.

4.4.2 If Section 4.4.1 applies, the following steps should be taken:

4.4.2.1 DMH will notify the person that the Department will not consider him/her as the client's personal representative.

4.4.2.2 DMH will immediately document the reasons why it has chosen to disregard the personal representative and must clearly state the basis of the reasonable belief that warrants disregard of the personal representative.

4.4.2.3 DMH, with advice from outside legal counsel, may, in certain instances, as soon as practicable, petition the court to appoint a temporary guardian pending resolution of the matter in the event that another personal representative must be appointed to make decisions regarding the client's PHI.



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**DOCUMENT RETENTION**

5.1 All documents required to be created or completed under this policy will be retained for a period of at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later.

**AUTHORITY**

HIPAA, 45 CFR, Part 160 and 164

**ATTACHMENT**

Attachment I      Disclosure of Deceased Individual's PHI Without Authorization Form